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17 *Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

20 REARDEN LLC et al.,  
 21 Plaintiffs,  
 22 vs.  
 23 THE WALT DISNEY COMPANY et al.,  
 Defendants,  
 24 REARDEN LLC et al.,  
 25 Plaintiffs,  
 26 vs.  
 27 TWENTIETH CENTURY FOX FILM  
 CORPORATION et al.,  
 28 Defendants.

Case Nos. 4:17-cv-04006-JST  
 4:17-cv-04191-JST

**DECLARATION OF KELLY M. KLAUS  
 IN SUPPORT OF DEFENDANTS' REPLY  
 IN SUPPORT OF MOTIONS FOR  
 SUMMARY JUDGMENT ON CAUSAL  
 NEXUS ISSUE**

Judge: Hon. Jon S. Tigar  
 Date: To be set  
 Time: To be set  
 Ctrm.: 6 (2nd Floor)

1 I, Kelly M. Klaus, hereby declare:

2 1. I am admitted to practice before all of the courts of the State of California and this  
3 Court. I am a partner in the law firm of Munger, Tolles & Olson LLP, counsel for Defendants in  
4 the above-captioned matter. I submit this declaration in support of Defendants' Reply in support  
5 of their Motion for Summary Judgment on the Causal Nexus Issue. Except as to those matters  
6 stated on information and belief, the contents of this declaration are based on my personal  
7 knowledge. Where matters are stated on information and belief, I am reliably informed of such  
8 matters and believe them to be true. If called as a witness, I could and would testify competently  
9 to the matters set forth in this declaration.

10 2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the  
11 transcript of the deposition of William Condon, taken in this matter on July 30, 2020.

12 3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the  
13 transcript of the deposition of Darren Hendler, taken in this matter on June 12, 2020.

14 4. Defendants initially filed their summary judgment motion on the causal nexus issue  
15 on February 28, 2019. Dkt. No. 139. In discovery on this motion, Rearden requested (among  
16 many other categories of documents), and Defendants agreed to produce, studies or analyses  
17 regarding, among other topics, the effectiveness of the marketing for the motion pictures in suit  
18 (before and after the release of those motion pictures), including the effectiveness of the trailers  
19 for the motion pictures in suit. I am informed and believe that Defendants collected and produced  
20 more than 100 marketing analyses, comprised of more than 4,250 pages. These documents  
21 included a marketing analysis for trailers for *Beauty and the Beast*, including an analysis of the  
22 trailer that was ultimately released in November 2016 that is Exhibit 23 to the Carlson Declaration  
23 in Opposition to Defendants' Motion. Rearden specifically requested that Defendants stipulate to  
24 the authenticity of the *Beauty and the Beast* trailer analysis document, and six other analyses of  
25 the motion pictures in suit and/or their trailers, and Defendants did so in the document that is  
26 attached as Exhibit 28 to the Carlson Declaration. Rearden did not submit with its opposition  
27 papers the analysis of the *Beauty and the Beast* trailer, any of the marketing analyses included in  
28

1 the authentication stipulation attached as Exhibit 28 to the Carlson declaration, or any other  
2 marketing analysis for any motion picture in suit or any trailer for any of those motion pictures.

3 5. Rearden's expert Philip Fier provided as exhibits to his written opinion lists of  
4 documents provided to him by Rearden's attorneys "for [his] consideration," and "other materials  
5 that [he] considered" in formulating his opinions. Fier Decl. ¶¶ 3-4, Exs. 2-3, Dkt. 264-10.  
6 Neither list includes any of the more than 100 marketing analyses for the motion pictures in suit or  
7 their trailers. *See id.* At Mr. Fier's deposition in this case, I asked Mr. Fier if he had asked  
8 Rearden's counsel whether they had any marketing analysis for the *Beauty and the Beast* trailer,  
9 and he testified he had made no such request. Attached as **Exhibit C** is a true and correct copy of  
10 excerpts from the transcript of the deposition of Philip Fier, taken in this matter on December 3,  
11 2020.

12 6. Attached as **Exhibit D** is a true and correct copy of excerpts from the transcript of  
13 the deposition of David Hoberman, taken in this matter on March 4, 2020.

14 I declare under penalty of perjury under the laws of the United States that the foregoing is  
15 true and correct and that I executed this declaration this 22d day of December 2020 at San  
16 Francisco, California.

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18 /s/ Kelly M. Klaus  
19 Kelly M. Klaus  
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